

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

BERNABE FLORES,
Plaintiff,

VS.

**U. S. BANK TRUST NATIONAL
ASSOCIATION, TRUSTEE AND
DITECH LOAN SERVICES,**

Defendant.

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CIVIL ACTION NO. _____

NOTICE OF REMOVAL

Comes now Defendant U. S. BANK TRUST NATIONAL ASSOCIATION, AS TRUSTEE OF THE CABANA SERIES III TRUST (“US BANK” or “Defendant”) and respectfully notifies the Court pursuant to 28 U.S.C. §§ 1332(a), 1441, and 1446 that it has this day removed this action from the 37th Judicial District Court of Bexar County, Texas to the United States District Court for the Western District of Texas, San Antonio Division. In support of such removal, Defendant states as follows:

THE STATE COURT ACTION

1. On July 29, 2020, Plaintiff Bernabe Flores sued Defendant US BANK, in Cause No. 2020-CI-03990 in the 37th Judicial District Court of Bexar County, Texas (the “State Court Action”), alleging various claims to prevent the foreclosure of a piece of real property located at 219 Audrey Alene Drive, San Antonio, Texas 78216-6610 (“the Property”).

2. To date, Defendant has not been served in this matter.

3. This notice of removal is filed within 30 days of Defendant’s notice and/or the filing of the State Court Action and is timely filed under 28 U.S.C. 1446(b). This notice has

been timely filed as it is being filed less than 30 days after the filing of the State Court Action. The Defendant who is not a party to this motion has not been served and their counsel for this case, if any, is not known.

4. Defendant removes the State Court Action to this Court on the basis of diversity jurisdiction.

BASIS FOR REMOVAL: DIVERSITY JURISDICTION

5. Where there is complete diversity among the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs, an action may be removed to federal court. See 28 U.S.C. §§ 1332(a), 1441(a).

6. Complete diversity exists in this case because Plaintiff is not a citizen of the same state as Defendant. Additionally, this action involves an amount in controversy that exceeds \$75,000, exclusive of interest and costs.

THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00

7. Where a defendant can show, by a preponderance of the evidence, that the amount in controversy more likely than not exceeds the jurisdictional minimum, removal is proper. *See White v. FCI U.S.A., Inc.*, 319 F.3d 672, 675-76 (5th Cir. 2003). A defendant can meet this burden if it is apparent from the face of the petition that the claims are likely to exceed \$75,000, or, alternatively, if the defendant introduces other evidence to show that the amount in controversy more likely than not exceeds \$75,000, exclusive of interest and costs. *See St. Paul Reins. Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *Berry v. Chase Home Fin., LLC*, No. C-09-116, 2009 WL 2868224, at *2 (S.D. Tex. Aug. 27, 2009).

8. The State Court Action, involves title to real property that has value well in excess of \$75,000.00.

DIVERSITY OF THE PARTIES

9. The Plaintiff is a resident of Bexar County, Texas and a citizen of Texas.

10. Defendant US BANK is the trustee of a trust. When determining the citizenship of a trust for the purposes of diversity jurisdiction, it is the citizenship of the trustee which controls. *Navarro Sav. Assoc. v. Lee* 446 U.S. 458, 464-66 (1980); *Mfrs. And Traders Trust Co. v. HSBC Bank USA, N.A.*, 564 F. Supp. 2d 261, 263 (S.D.N.Y. 2008). U.S. BANK is, and all times relevant to this action was, a national association bank with its main office located in Cincinnati, Ohio. A national bank is a citizen of the state where its main office, as designated in its articles of association, is located. *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 307 (2006). Thus, Defendant is a citizen of Ohio, and no other state, for purposes of diversity jurisdiction.

11. Co-Defendant Ditech Financial LLC is a corporation formed in Delaware and headquartered in Pennsylvania.

12. Because Plaintiff and Defendants are citizens of different states, there is complete diversity between the parties. *See* 28 U.S.C. § 1332.

PROCEDURAL REQUIREMENTS

12. This action is properly removed to this Court, as the State Court Action is pending within this district and division. *See* 28 U.S.C. § 1441; 28 U.S.C. § 124(d)(4).

13. The United States District Court for the Western District of Texas, San Antonio Division, has original jurisdiction over this action based on diversity jurisdiction because Defendant is now, and was at the time this action commenced, diverse in citizenship from Plaintiff, and the amount in controversy exceeds the minimum jurisdictional amount. *See* 28 U.S.C. § 1332(a).

14. Pursuant to 28 U.S.C. § 1446(a) this Notice of Removal is accompanied by copies

of the following materials:

<u>Exhibit “1”</u>	A completed JS 44 civil cover sheet
<u>Exhibit “2”</u>	A supplemental civil coversheet
<u>Exhibit “3”</u>	Copy of docket sheet in the state court action
<u>Exhibit “4”</u>	Copy of each document filed in state court

15. Venue is proper in this district because this district and division embrace the place in which the removed action has been pending. Additionally, the property that is the subject of the litigation is located in this county.

16. Defendant will promptly file a copy of this notice of removal with the clerk of the state court in which the action has been pending.

WHEREFORE, Defendant removes this action from the 37th Judicial District Court of Bexar County, Texas, to the United States District Court for the Western District of Texas, San Antonio Division, so that this Federal Court may assume jurisdiction over the case as provided by law.

Respectfully submitted,

ANDERSON ★ VELA, L.L.P.

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ATTORNEYS FOR U. S. BANK TRUST NATIONAL
ASSOCIATION, AS TRUSTEE OF THE CABANA
SERIES III TRUST

By: */s/ Richard E. Anderson*.

RICHARD E. ANDERSON

Texas State Bar No. 01209010

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CERTIFICATE OF SERVICE

I certify that on this the 17th day of August, 2020, a true copy of the above document has been either delivered in person or delivered in person by my agent or delivered by courier with receipted delivery or sent by certified mail, return receipt requested, or sent by telephonic document transfer or by electronic delivery before 5:00 p.m. the recipient's local time to the following pursuant to the Federal Rules of Civil Procedure for each party listed on the attached service list.

SERVICE LIST

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By: */s/ Richard E. Anderson*
RICHARD E. ANDERSON